IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 209 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAMESHBHAI R. PANCHAL

Appearance:

MR AKIL QURESHI FOR MR RP BHATT for Petitioner

NOTICE SERVED for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. At the instance of the Revenue under Section 256(c) of the Income Tax Act, 1961, the following question has been referred:

"Whether on the facts and in the circumstances of the case, the impugned amount of Rs. 19,200/- received by the assessee on retirement as a result of revaluation of the assets is not taxable u/s. 28(iv) or section 41(2) of the I.T. Act, 1961?"

2. The facts of case briefly stated are as under:

The assessee along with his father Shri Babubhai alias Ranchhoddas Govindlal Panchal and two brothers was partner in a firm M/s. Panchal Engineering Works. At the time of separation of these partners, the plant and machinery was also revalued at Rs.1,60,000/- and the amount was divided amongst the partners proportionate to their share in the property. The assessing officer brought to tax the amount of Rs.19,200/- as a share of profit at the time of retirement of some of the partners from the original firm.

3. The assessment officer brought the amount to tax under Section 28(a) as also under Section 48(2) of the Income Tax Act, 1961. It was on the above facts that the question has been referred to this Court.

4. Learned counsel for the Revenue brings to our notice the decision of this Court in Income Tax Reference No. 129 of 1985 in the case of another partner of the same firm, namely Bharatkumar R. Panchal, who had also received his share on retirement of partners from the firm mentioned above. After examining the relevant provisions contained in Section 28(4) and Section 41(2), the Court came to the conclusion that the amount is not liable to be brought to tax in either of the two provisions. The present case is clearly covered by the decision of this Court in the case of Bharatkumar R. Panchal (supra) in Income Tax Reference No. 129 of 1985 decided on 21st September 2000.

Consequently, we answer the question in favour of the assessee and against the Revenue.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(M.S. SHAH, J)

[sndevu]